IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1207 OF 2005

Indira Krupa Sahakari Grihnirman
Sanstha (Proposed) an undertaking
of Indira Kripa Zopadpatti Mandal ...Petitioner

Vs.

The Additional Collector,
(Encroachment & Removal) & Ors. ...Respondents

Shri Uday Bobade with Mukesh Subramanium for the Petitioners.

Shri Milind More, A.G.P.for the Respondent Nos.1 & 6.

Shri G.D. Utangale for the Respondent No.2.

Ms Aruna Sawla for the Respondent No.4.

Shri S.G. Surana for the Respondent No.5.

Shri V.C. Kotwal, Senior Advocate for the Respondent No.7.

CORAM : H.L GOKHALE AND ABHAY S. OKA, JJ.

DATE ON WHICH JUDGMENT IS RESERVED: MARCH 14, 2006.

DATE ON WHICH JUDGMENT IS PRONOUNCED:APRIL 26, 2006.

JUDGMENT(PER ABHAY S. OKA, J):

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has taken exception to the action of the second Respondent of sanctioning Slum Rehabilitation Scheme on the basis of proposal submitted by the seventh to nineth Respondent under Regulation 33(10) of the Development Control Regulations for the city of Mumbai (for short referred

to as D.C. Regulations). The case of the Petitioner which is a proposed Co-operative Housing Society is that it is a society duly registered under the Societies Registration Act, 1869. The Petitioner-Society is claiming to be in possession of lands bearing city survey No.617 (part) and 629 (part) (hereinafter referred to as said property) at Siddharthnagar, Bandra (East), Mumbai-51. According to the case of the Petitioner, there are one hundred and eleven members of the Petitioner-Society who are occupying huts on the said property from 1980 onwards.

2. The Petitioner submitted an Application for approval of a Slum Rehabilitation Scheme under Regulation 33(10) of the D.C. Regulations. According to the Petitioner the first Respondent-Additional Collector completed the survey of the property and verified that the Petitioner-Society had support of one hundred and eleven members. According to the case of the Petitioner, huts of twenty-four members of the Petitioner-Society are situated on the northern side of the said property in city survey No.617 (part) and huts of its twenty-two members are situated on the southern side of the said property being city survey No.629 (part). According to the case of the Petitioner the fifth Respondent who is the developer

appointed by the seventh to nineth Respondent-Societies is trying to sabotage the proposed Slum Re-development Scheme of the Petitioner-Society by getting a plan approved for construction of buildings on the area out of City Survey No.617 which is in use and occupation of twenty-four members of the Petitioner-Society.

3. Another contention of the Petitioner-Society is that in the original Annexure II submitted by the seventh to ninth Respondent, names of the said twenty-four members have not been incorporated. It is stated that names of twenty-two members of the Petitioner-Society whose huts are located on the southern side of city survey No.629(part) were included in the Annexure II of the fifth Respondent without obtaining their consent. The Petitioner-Society submitted that though the Annexure II of the fifth Respondent has been approved which included twenty-two members of the Petitioner-Society, in fact, the said members are not willing to become part of the project undertaken by the fifth Respondent.

4. The contention of the Petitioner is that the twenty-four members will be rendered homeless by the

fifth Respondent though they are eligible to secure accommodation as per the scheme formulated under Regulation 33(10) of the D.C. Regulations. It is submitted that the scheme submitted by the Petitioner-Society has become unviable due to reservations and due to fact that area occupied by twenty-four members has been included in the scheme of seventh to ninth Respondent. It is submitted that the Petitioner-Society raised objection about inclusion of the twenty-two members in the Annexure II submitted by the seventh Respondent-Society. It is submitted that as the scheme submitted by the Petitioner will not remain viable, the sanction accorded to the scheme of the seventh to ninth Respondents will have to be set aside.

5. Affidavits have been filed by the contesting Respondents. In short, the grievance of the contesting Respondents is that Slum Rehabilitation Scheme of the seventh to ninth Respondents was approved on 02nd August, 2003 and necessary letter of intent has been issued. The said scheme relates to land bearing survey Nos.615, 616, 617 (part) and 629 (part). It is submitted that twenty-two persons who are allegedly members of the Petitioner-Society were included in the original Annexure II which is approved

and thus the said twenty-two members will get permanent accommodation in the scheme which is implemented by the fifth Respondent. It is submitted that additional Annexure II for including the names of twenty-four other members of the Petitioner has been submitted by the fifth Respondent and if the said proposal is approved, even the said twenty-four members will get permanent accommodation in the scheme implemented by the fifth Respondent. The contention of the Respondents is that the letter of intent dated 02nd August, 2003 has been issued to the fifth Respondent on the basis of Annexure II issued on 25th February, 2003. It is submitted that in March 2004, S.R.A. granted permission in favour of the fifth Respondent for constructing one hundred and twenty transit tenements. It is also pointed out that on 12th October, 2004 building plans of rehab building Nos.1 and 7 had been approved by the S.R.A. It is submitted that the lay out plan of all rehab buildings have been approved in the year 2004 and as of today fifth Respondent has constructed hundred transit tenements. It is submitted that if the area allegedly occupied by the twenty-four members of the Petitioner-Society cannot be excluded from the scheme of the fifth Respondent as the scheme has been sanctioned in the year 2003 and as per the lay out

plan sanctioned, construction of one rehab buildings on the said portion of the land has been approved. It is submitted that if the entire lay out of the rehab buildings is to be disturbed more than three hundred members of the seventh to ninth Respondents- Societies will suffer prejudice.

6. It must be noted here that on 25th May, 2005 the Executive Engineer of the Slum Rehabilitation Authority issued a communication to the architect of the Petitioner seeking clarification from him as regards inclusion of the are of eighth and ninth Respondent- Societies in the scheme submitted by the Petitioner. It was stated that by letter dated 25th January, 2005, the architect was requested to submit clarification but, no compliance has been made. By the said letter dated 25th May, 2005 the architect of the Petitioner was called upon to submit the revised scheme by excluding the said area. On the basis of the said letter, a notice of motion was taken out by the Petitioner. The said notice of motion was disposed of by this Court by order dated 21st June, 2005. This court recorded a statement of the learned Counsel for the Petitioner that the Petitioner will file reply to the communication dated 25th May, 2005 within a period of three days. The Division Bench

directed the S.R.A. to consider the reply and pass a reasoned order within period of two weeks. It is not in dispute that the Petitioner has submitted the reply but reasoned order has not been passed by the S.R.A.

7. We have extensively heard the submissions of the counsel appearing for the respective parties. We have given anxious consideration to the submissions. We have perused various affidavits and other documents produced on record.

8. It appears that the Annexure II submitted by the fifth Respondent on behalf of seventh to ninth Respondent was approved by the Additional Collector on 25th February, 2003. In the said Annexure II names of twenty-two members of the Petitioner- Society have been included. On 02nd August, 2003, a letter of intent was issued in favour of the fifth Respondent, subject to the fifth Respondent undertaking to rehabilitate all eligible slum dwellers. The fifth Respondent has undertaken to construct a municipal primary school and handover the same to Bombay Municipal Corporation free of cost. The fifth Respondent was to construct 598 tenements. Public notice of the said letter of intent was issued on 29th August, 2003. On 26th March, 2004 S.R.A. granted

permission in favour of the fifth Respondent for constructing 120 transit tenements. On 04th October, 2004 the S.R.A. approved the entire let-out plan of the entire area covered by the re-development scheme of the fifth Respondent. On 12th October, 2004 approval was granted for construction of rehab building Nos.1 and 7. On 13th January, 2005 the Collector, Mumbai (Sub-urban) granted permission in favour of the fifth Respondent to construct 140 transit tenements.

9. In the meanwhile, on 10th December, 2004 the Petitioner submitted a proposal for approval of Slum Rehabilitation Scheme to S.R.A. It is an admitted position that the scheme related to a part of the land for which scheme of fifth Respondent was already approved. As pointed out earlier, on 25th January, 2005 the S.R.A. directed the Petitioner to re-submit a revised scheme by excluding the area which was covered by the scheme as per the fifth Respondent. The said letter was followed by a further communication dated 25th May, 2005 which is already referred to above. In the said letter it is stated that unless revised proposal after excluding the area covered by the scheme of the fifth Respondent was submitted, the proposal of the Petitioner will be

treated as closed. The present Petition was filed on 25th March, 2005 and on 21st June, 2005 as stated above, in notice of motion taken out by the Petitioner, a direction was issued to the S.R.A. to pass speaking order after considering the reply filed by the Petitioner to letter dated 25th May, 2005. Admittedly, reasoned order is not passed till today. On 14th February, 2005, an Application was moved by the fifth Respondent to the S.R.A. for including in the sanctioned Annexure II the names of the twenty-four occupants who were not included earlier and who are allegedly members of the Petitioner-Society.

10. It is not in dispute that the Application submitted by the seventh to ninth Respondent-Societies is much prior in time to the Application for approval of the scheme submitted by the Petitioner. It is also submitted that a small area out of the area for which S.R.A. scheme of the seventh to ninth Respondent was sanctioned on 02nd August, 2003 has been included in the proposal submitted by the Petitioner on 10th December, 2004.

11. This court has held that in so far as an eligible slum dweller is concerned, his right is

limited to securing a transit accommodation and a permanent accommodation admeasuring 225 sq.ft. and individual hutment dweller cannot insist that only a particular society or developer should develop the concerned slum area. When the scheme submitted by the fifth Respondent was already approved in the year 2003, in normal course, the subsequent Application made by the Petitioner including part of the area of the scheme of fifth Respondent could not have been considered and accordingly a direction has been issued by S.R.A. to the Petitioners to submit a fresh proposal by deleting the said area which is overlapping with the area of the seventh to ninth Respondents. To the said direction, the Petitioner has filed a reply. The S.R.A. is expected to pass order in terms of direction given by this Court on 21st June, 2005.

12. However, there is a peculiar feature to this case. It seems to be an admitted position that twenty-four persons who are claiming to the members of the Petitioner were occupying huts on the area in respect of which the scheme has been sanctioned on 02nd August, 2003. When survey was carried out in the year 2003 by the Additional Collector for verification and grant of approval to the Annexure II submitted by

the fifth Respondent, the Additional Collector did not notice the fact that these twenty-four persons were occupying huts. As late as on 14th February, 2005, the fifth Respondent has applied for including the names of these twenty-four occupants in its Annexure II which is already approved. In the Application dated 10th December, 2004 made by the Petitioner, the names of the said twenty-four members have been included. It is surprising that the fifth Respondent did not include names of these twenty-four members in the original proposal though area covered by the huts of the said twenty-four persons was sought to be re-developed.

13. There is already an order passed by this Court on 21st June, 2005 directing the S.R.A. to consider the reply filed by the Petitioner to the communication dated 25th May, 2005 and to pass a speaking order. While passing the speaking order the S.R.A. will have to decide whether the Petitioner can be permitted to apply by including some area of the fifth Respondent whose scheme is already sanctioned. It is necessary for the S.R.A. to pass appropriate order as expeditiously as possible. We may add that the S.R.A. will give hearing to the fifth and seventh to ninth Respondents before passing the order. To enable the

S.R.A. to make proper application, it is necessary that the Application made by the fifth Respondent on 14th February, 2005 for including the names of twenty-four persons in its Annexure II should not be considered and decided till S.R.A. passes appropriate order.

14. So far as grievance regarding twenty-two members made by the Petitioner is concerned, we find that their names were admittedly included in the Annexure II of the fifth Respondent which was approved in the year 2003. Now in the year 2006 the Annexure II cannot be disturbed by deleting the names of these twenty-two persons.

15. Hence, we pass the following order:

O R D E R

(i) The S.R.A. will pass speaking order as directed by this Court by order dated 21st June, 2005 within period of six weeks from today. Before passing the said order, the S.R.A. will give opportunity of being heard to the fifth Respondent and the seventh to ninth Respondents.

(ii) Till the speaking order is passed, Application made by the fifth Respondent on 14th February, 2005 for modification of its Annexure II shall not be decided. The said Application be decided subsequently depending upon the nature of order passed by the S.R.A. Till the date of passing speaking order, fifth Respondent will not carry on work of demolition of the huts of 24 hutment dewellers who are the members of the Petitions and will not start costruction of rehabilitation buildings on the land occupied by these 24 hutments.

(iii) Parties to act upon an authenticated copy of this order.

H.L. GOKHALE, J

ABHAY S. OKA,J